

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2  
3 In the Matter of

4 **JOHN W. HOWLEY, M.D.**

5 Holder of License No. 22390  
6 For the Practice of Allopathic Medicine  
7 In the State of Arizona.

Board Case No. MD-04-0026A

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

(Letter of Reprimand and MAP  
Probation)

8  
9 The Arizona Medical Board ("Board") considered this matter at its public meeting  
10 on October 14, 2004. John W. Howley, M.D., ("Respondent") appeared before the Board  
11 with legal counsel Steve Myers and Neil Alden for a formal interview pursuant to the  
12 authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the  
13 following findings of fact, conclusions of law and order after due consideration of the facts  
14 and law applicable to this matter.

15 **FINDINGS OF FACT**

16 1. The Board is the duly constituted authority for the regulation and control of  
17 the practice of allopathic medicine in the State of Arizona.

18 2. Respondent is the holder of license No. 22390 for the practice of allopathic  
19 medicine in the State of Arizona.

20 3. On January 5, 2004 the Board received information that Respondent had  
21 been arrested for an extreme driving under the influence ("DUI"). Respondent did not  
22 report this arrest to the Board. Respondent was interviewed by Michel Sucher, M.D., the  
23 Board's contracted addiction medicine specialist and Board Staff on March 8, 2004. At  
24 the conclusion of the interview Dr. Sucher recommended that Respondent present to a  
25 Board approved facility for an evaluation. Respondent agreed to this recommendation  
and presented to Sierra Tucson for an evaluation on March 27, 2004. Respondent was

1 found to be alcohol dependent and Sierra Tucson recommended he complete inpatient  
2 treatment.

3 4. Respondent complied with this recommendation and entered treatment at  
4 Sierra Tucson on April 4, 2004. During this time Respondent had voluntarily removed  
5 himself from practice by signing an Interim Consent Agreement for Practice Restriction.  
6 Sierra Tucson reported that Respondent was open during his treatment and participated  
7 completely.

8 5. At its May teleconference meeting the Board vacated the Interim Consent  
9 Agreement for Practice Restriction. At this same meeting Respondent and the Board  
10 entered an Interim Consent Agreement for Participation in the Board's Monitored  
11 Aftercare Program ("MAP").

12 6. Board Staff reported that Respondent has been fully compliant with the  
13 terms of his interim MAP agreement. Respondent testified that his December 24, 2003  
14 DUI arrest has been very embarrassing for him personally, professionally and for his  
15 family members. Respondent stated that he regretted that conduct and assumes  
16 responsibility for it. Respondent stated that on the night of the DUI he was not on call  
17 and was at a neighborhood house for a Christmas party. Respondent stated that he was  
18 pulled over in his driveway. Respondent stated that he was unaware he was required to  
19 report the DUI to the Board and takes responsibility for his failure to do so. Respondent  
20 stated that he contacted an attorney in Flagstaff regarding the DUI and was never  
21 advised to notify the Board.

22 7. Respondent testified that his experience in MAP has been very positive and  
23 he is quite enthusiastic about the program. Respondent stated that the statutory label of  
24 "habitual intemperance" does not fit his situation. Respondent stated that when he  
25 entered the Interim Consent Agreement for Participation in MAP it was a stressful

1 situation in his life and he has come through that. Respondent stated that he  
2 understands the Board's position regarding public safety, but the appearance of his  
3 consent agreement on the Board's website resulted in his being dropped by seven  
4 insurance carriers. Respondent testified that as a result, several patients had to leave his  
5 practice. Respondent stated that he believed that if a letter of reprimand that references  
6 the "habitual intemperance" statutory subsection appears on his record he will face  
7 further consequences to his practice.

8 8. Respondent testified that in Flagstaff where he practices there is a limited  
9 number of cardiologists – there is only one other full-time cardiologist besides himself and  
10 one part-time cardiologist in Page where he also practices. Respondent stated that the  
11 BlueCross BlueShield patients who had to leave his practice are either going to Salt Lake  
12 City or Phoenix for care and he does not believe that is good for the patients.  
13 Respondent testified that he prides himself on the strong relationship he has with his  
14 patients and he cares about them. Respondent believes a Letter of Reprimand will hurt  
15 him personally and professionally and will hurt his care of his patients.

16 9. Respondent was asked if the December 2003 DUI was his second DUI.  
17 Respondent testified it was and the first was approximately twelve years ago when he hit  
18 a deer with his car in the Adirondack Mountains in New York. Respondent testified that  
19 the charge was changed to reckless driving. Respondent was asked if he received any  
20 treatment for alcohol dependency at that time. Respondent stated he had not.  
21 Respondent was asked if that incident set off any red flags for him. Respondent testified  
22 that assuming the responsibility of drinking and driving set off a big red flag for him.

23 10. Respondent was asked if he had the same experience of many who enter  
24 treatment - that his alcohol consumption was greater than he was willing to admit, at least  
25 when he first went into treatment. Respondent testified that after treatment, or entering

1 treatment at Sierra Tucson, he became acutely aware of potential problems. Respondent  
2 stated that he potentially minimized things. Respondent testified that, to put things in  
3 perspective, the first day he entered Sierra Tucson it was a very intimidating process and  
4 he is now a better person for it. Respondent stated that he was very anxious, very  
5 nervous and was being asked a lot of very personal and deliberate questions. As a  
6 result, he may have minimized things.

7 11. Respondent was asked about his continued use of alcohol for  
8 approximately two more months after his December 2003 arrest and whether he believed  
9 he would have continued to use alcohol if the Board had not intervened. Respondent  
10 testified that he did not have a crystal ball to look into that and he was grateful in a way  
11 that he had the DUI in the sense that it was his own personal responsibility and there was  
12 no related motor vehicle accident. Respondent stated that the subsequent events had  
13 improved him and he feels better for himself, he has more self-confidence. Respondent  
14 added that he could not predict what would have occurred had he not been in the Board's  
15 program.

16 12. Respondent was asked when he first became aware of the statutory  
17 change that required he report his DUI arrest. Respondent testified that he became  
18 aware when he was notified by the Board and immediately drafted a letter explaining the  
19 situation and the circumstances of the event.

#### 20 CONCLUSIONS OF LAW

21 1. The Arizona Medical Board possesses jurisdiction over the subject matter  
22 hereof and over Respondent.

23 2. The Board has received substantial evidence supporting the Findings of  
24 Fact described above and said findings constitute unprofessional conduct or other  
25 grounds for the Board to take disciplinary action.

1           3.       The conduct and circumstances described above constitute unprofessional  
2 conduct pursuant to A.R.S. § 32-1401(27<sup>1</sup>)(f)("[h]abitual intemperance in the use of  
3 alcohol or habitual substance abuse.")

4           4.       The conduct and circumstances described above constitute unprofessional  
5 conduct pursuant to A.R.S. § 32-1401(27)(a)("[v]iolating any federal or state laws, rules  
6 or regulations applicable to the practice of medicine;") specifically, A.R.S. § 32-3208(A)  
7 ("[a] health professional who has been charged with a misdemeanor involving conduct  
8 that may affect patient safety or a felony . . . must notify the health professional's  
9 regulatory board in writing within ten working days after the charge is filed.")

10                               **ORDER**

11       Based upon the foregoing Findings of Fact and Conclusions of Law,

12       IT IS HEREBY ORDERED that:

13           1.       Respondent is issued a Letter of Reprimand for failure to report his DUI  
14 arrest and for habitual intemperance in the use of alcohol.

15           2.       Respondent is placed on Probation for 5 years with the following terms and  
16 conditions:

17           a.       Respondent shall submit quarterly declarations under penalty of perjury on  
18 forms provided by the Board, stating whether there has been compliance with all  
19 conditions of probation. The declarations shall be submitted on or before the 15th of  
20 March, June, September and December of each year, beginning on or before March 15,  
21 2005.

22           **b1. Participation.** Respondent shall promptly enroll in and participate in the  
23 Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physicians  
24

25       

---

  
<sup>1</sup> Formerly A.R.S. § 32-1401(26). Renumbered effective August 25, 2004.

1 who are impaired by alcohol or drug abuse. Respondent shall remain in MAP for five  
2 years from the effective date of this Order. Respondent's participation in MAP may be  
3 unilaterally terminated with or without cause at the Board's discretion at any time after the  
4 issuance of this Order.

5       **2.     Group Therapy.** Respondent shall attend MAP's group therapy sessions  
6 one time per week for the duration of this Order, unless excused by the MAP group  
7 therapist for good cause such as illness or vacation. Respondent shall instruct the MAP  
8 group therapist to release to the Board, upon its request, all records relating to  
9 Respondent's treatment and to submit monthly reports to the Board regarding attendance  
10 and progress. The reports shall be submitted on or before the 10th day of each month.

11       **3.     12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-  
12 step meetings or other self-help group meetings appropriate for substance abuse and  
13 approved by the Board, for a period of ninety days beginning not later than either (a) the  
14 first day following Respondent's discharge from chemical dependency treatment or (b) the  
15 date of this Order.

16       **4.** Following completion of the ninety meetings in ninety days, Respondent shall  
17 participate in a 12-step recovery program or other self-help program appropriate for  
18 substance abuse as recommended by the MAP group therapist and approved by the  
19 Board. Respondent shall attend a minimum of three 12-step or other self-help program  
20 meetings per week.

21       **5.     Board-Approved Primary Care Physician.** Respondent shall promptly  
22 obtain a primary care physician and shall submit the name of the physician to Board Staff  
23 in writing for approval. The Board-approved primary care physician ("PCP") shall be in  
24 charge of providing and coordinating Respondent's medical care and treatment. Except in  
25 an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP

1 and from health care providers to whom the PCP refers Respondent from time to time.  
2 Respondent shall request that the PCP document all referrals in the medical record.  
3 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and  
4 provide a copy of this Order to the PCP. Respondent shall also inform all other health  
5 care providers who provide medical care or treatment that Respondent is participating in  
6 the Board's rehabilitation program.

7       **6.     Medication.** Except in an *Emergency*, Respondent shall take no *Medication*  
8 unless the PCP or other health care provider to whom the PCP makes a referral  
9 *prescribes the Medication*. Respondent shall not self-prescribe any *Medication*.

10       **7.** If a controlled substance is prescribed, dispensed, or is administered to  
11 Respondent by any person other than PCP, Respondent shall notify the PCP in writing  
12 within 48 hours. The notification shall contain all information required for the medication  
13 log entry specified in paragraph 8. Respondent shall request that the notification be made  
14 a part of the medical record. This paragraph does not authorize Respondent to take any  
15 *Medication* other than in accordance with paragraph 6.

16       **8.     Medication Log.** Respondent shall maintain a current legible log of all  
17 *Medication* taken by or administered to Respondent and shall make the log available to  
18 the Board and its Staff upon request. For *Medication* (other than controlled substances)  
19 taken on an on-going basis Respondent may comply with this paragraph by logging the  
20 first and last administration of the *Medication* and all changes in dosage or frequency. The  
21 log, at a minimum, shall include the following:

- 22       a.     Name and dosage of *Medication* taken or administered;
- 23       b.     Date taken or administered;
- 24       c.     Name of prescribing or administering physician;
- 25       d.     Reason *Medication* was prescribed or administered.

1 This paragraph does not authorize Respondent to take any *Medication* other than in  
2 accordance with paragraph 6.

3 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or  
4 any food or other substance containing poppy seeds or alcohol.

5 10. **Biological Fluid Collection.** During all times that Respondent is physically  
6 present in the State of Arizona and such other times as Board Staff may direct,  
7 Respondent shall promptly comply with requests from Board Staff, the MAP group  
8 therapist, or the MAP director to submit to witnessed biological fluid collection. If  
9 Respondent is directed to contact an automated telephone message system to determine  
10 when to provide a specimen Respondent shall do so within the hours specified by Board  
11 Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly  
12 comply" means "immediately". In the case of a telephonic request, "promptly comply"  
13 means that, except for good cause shown, Respondent shall appear and submit to  
14 specimen collection not later than two hours after telephonic notice to appear is given.  
15 The Board in its sole discretion shall determine good cause.

16 11. Respondent shall provide Board Staff in writing with one telephone number  
17 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis  
18 to submit to biological fluid collection. For the purposes of this section telephonic notice  
19 shall be deemed given at the time a message to appear is left at the contact telephone  
20 number provided by Respondent. Respondent authorizes any person or organization  
21 conducting tests on the collected samples to provide testing results to the Board and the  
22 MAP director.

23 12. Respondent shall cooperate with collection site personnel regarding  
24 biological fluid collection. Repeated complaints from collection site personnel regarding  
25 Respondent's lack of cooperation regarding collection may be grounds for termination



1 from MAP.

2       **13.   Payment for Services.** Respondent shall pay for all costs, including  
3 personnel and contractor costs, associated with participating in MAP at the time  
4 service is rendered or within 30 days of each invoice sent to Respondent.

5       **14.   Examination.** Respondent shall submit to mental, physical, and medical  
6 competency examinations at such times and under such conditions as directed by the  
7 Board to assist the Board in monitoring Respondent's ability to safely perform as a  
8 physician and Respondent's compliance with the terms of this Order.

9       **15.   Treatment.** Respondent shall submit to all medical, substance abuse, and  
10 mental health care and treatment ordered by the Board, or recommended by the MAP  
11 director.

12       **16.   Obey All Laws.** Respondent shall obey all federal, state and local laws, and  
13 all rules governing the practice of medicine in the State of Arizona.

14       **17.   Interviews.** Respondent shall appear in person before the Board and its  
15 Staff and committees for interviews upon request, upon reasonable notice.

16       **18.   Address and Phone Changes, Notice.** Respondent shall immediately  
17 notify the Board in writing of any change in office or home addresses and telephone  
18 numbers. Respondent shall provide Board Staff at least three business days advance  
19 written notice of any plans to be away from office or home when such absence would  
20 prohibit Respondent from responding to an order to provide a biological fluid specimen or  
21 to communications from the Board. The notice shall state the reason for the intended  
22 absence from home or office, and shall provide a telephone number that may be used to  
23 contact Respondent.

24       **19.   Relapse, Violation.** In the case of chemical dependency relapse by  
25 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent

1 shall promptly enter into an Interim Consent Agreement that requires, among other things,  
2 that Respondent not practice medicine until such time as Respondent successfully  
3 completes an inpatient or residential treatment program for chemical dependency  
4 designated by the Board or Staff and obtains affirmative approval to return to the practice  
5 of medicine. Prior to approving Respondent's request to return to the practice of medicine,  
6 Respondent may be required to submit to witnessed biological fluid collection, undergo  
7 any combination of physical examination, psychiatric or psychological evaluation and/or  
8 successfully pass the special purpose licensing examination or the Board may conduct  
9 interviews for the purpose of assisting it in determining the ability of Respondent to safely  
10 return to the practice of medicine. **In no respect shall the terms of this paragraph**  
11 **restrict the Board's authority to initiate and take disciplinary action for violation of**  
12 **this Order.**

13 **20. Notice Requirements.**

14 (A) Respondent shall immediately provide a copy of this Order to all  
15 employers and all hospitals and free standing surgery centers at which Respondent  
16 currently has privileges. Within 30 days of the date of this Order, Respondent shall  
17 provide the Board with a signed statement of compliance with this notification requirement.  
18 Upon any change in employer or upon the granting of privileges at additional hospitals and  
19 free standing surgery centers, Respondent shall provide the employer, hospital or free  
20 standing surgery center with a copy of this Order. Within 30 days of a change in employer  
21 or upon the granting of privileges at additional hospitals and free standing surgery centers,  
22 Respondent shall provide the Board with a signed statement of compliance with this  
23 notification requirement.

24 (B) Respondent is further required to notify, in writing, all employers,  
25 hospitals and free standing surgery centers at which Respondent currently has or in the

1 future gains employment or privileges, of a chemical dependency relapse, use of drugs or  
2 alcohol in violation of this Order and/or entry into a treatment program. Within seven days  
3 of any of these events Respondent shall provide the Board written confirmation of  
4 compliance with this notification requirement.

5 (C) Respondent shall immediately submit to the Board under penalty of  
6 perjury, on a form provided by the Board, the name(s) and address(es) of all employers  
7 and all hospitals and free standing surgery centers at which Respondent currently holds  
8 privileges to practice. Respondent is further required to, under penalty of perjury, on a  
9 form provided by the Board, immediately notify the Board of any changes in employment  
10 and of any hospitals and free standing surgery centers at which Respondent gains  
11 privileges after the effective date of this Order.

12 21. **Public Record.** This Order is a public record.

13 22. **Out-of State.** In the event Respondent resides or practices as a physician in  
14 a state other than Arizona, Respondent shall participate in the rehabilitation program  
15 sponsored by that state's medical licensing authority or medical society. Respondent shall  
16 cause the other state's program to provide written reports to the Board regarding  
17 Respondent's attendance, participation, and monitoring. The reports shall be due on or  
18 before the 15th day of March and September of each year, until the Board terminates this  
19 requirement in writing.

20 23. This Order supersedes all previous consent agreements and stipulations  
21 between the Board and Respondent.

22 24. The Board retains jurisdiction and may initiate new action based upon any  
23 violation of this Order.

## 24 II. DEFINITIONS

25 **"Medication"** means "prescription-only drug, controlled substance, and over-the

1 counter preparation, other than plain aspirin and plain acetaminophen."

2 "Emergency" means "a serious accident or sudden illness that, if not treated  
3 immediately, may result in a long-term medical problem or loss of life."

4 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

5 Respondent is hereby notified that he has the right to petition for a rehearing or  
6 review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or  
7 review must be filed with the Board's Executive Director within thirty (30) days after  
8 service of this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient  
9 reasons for granting a rehearing or review. Service of this order is effective five (5) days  
10 after date of mailing. If a motion for rehearing or review is not filed, the Board's Order  
11 becomes effective thirty-five (35) days after it is mailed to Respondent.

12 Respondent is further notified that the filing of a motion for rehearing or review is  
13 required to preserve any rights of appeal to the Superior Court.

14 DATED this 12<sup>th</sup> day of January, 2004. <sup>5 Ten</sup>



THE ARIZONA MEDICAL BOARD

20  
21  
22  
23  
24  
25

By *T. C. Miller*

Timothy C. Miller  
Executive Director

ORIGINAL of the foregoing filed this  
12<sup>th</sup> day of January, 2004 with: <sup>5 Ten</sup>

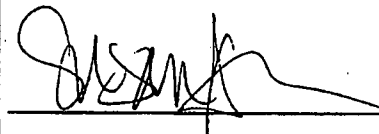
Arizona Medical Board  
9545 East Doubletree Ranch Road  
Scottsdale, Arizona 85258

Executed copy of the foregoing  
mailed by U.S. Certified Mail this 12<sup>th</sup>  
day of January, 2004, to: <sup>5 Ten</sup>

1 Steve Myers  
2 Myers & Jenkins PC  
3 3003 N Central Ave Ste 1900  
4 Phoenix AZ 85012-2910

4 Neil Alden  
5 Bowman & Brooke, LLP  
6 2901 North Central Avenue, Suite 1900  
7 Phoenix, Arizona 85012-2763

6 John W. Howley, M.D.  
7 Address of Record

8   
9

---